



FEDERAL ELECTION COMMISSION
Washington, DC 20463

VIA ELECTRONIC AND FIRST CLASS MAIL.

APR 11 2017

Peter Spivack, Esq.
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RE: MUR 7122

Dear Mr. Spivack:

On August 15, 2016, the Federal Election Commission notified your clients, American Pacific International Capital, Inc., Wilson Chen, Gordon Tang, and Huaidan Chen (the "Respondents"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to your clients at that time.

Upon review of the allegations contained in the complaint, and information supplied by you, the Commission, on March 29, 2017, found that there is reason to believe that the Respondents violated 52 U.S.C. § 30121(a)(1)(A), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the Office of the General Counsel within 15 days of receipt of this notification. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. See 52 U.S.C. § 30109(a)(4).

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should make such a request by letter to the Office of the General Counsel. See 11 C.F.R. 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into in order to complete its investigation of the

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matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been delivered to the Respondents.

Requests for extensions of time are not routinely granted. Requests must be made in writing at least five days prior to the due date of the response and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days. Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's web site at http://www.fec.gov/em/respondent_guide.pdf.

This matter will remain confidential in accordance with 52 U.S.C §§ 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

If you have any questions, please contact Christopher Edwards, the attorney assigned to this matter, at (202) 694-1568 or cedwards@fec.gov.

On behalf of the Commission,


Steven T. Walther
Chairman

Enclosure:
Factual and Legal Analysis

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: American Pacific International Capital, Inc. MUR 7122
Wilson Chen
Huaidan Chen
Gordon Tang

I. INTRODUCTION

The Complaint alleges that American Pacific International Capital, Inc., ("APIC") a United States subsidiary of a foreign corporation, Jag Pacific, Ltd., and three of its principals violated Section 30121 of the Federal Election Campaign Act of 1971, as amended (the "Act"), by contributing \$1.3 million to Right to Rise USA. The Complaint bases its allegation on an assertion that foreign nationals Gordon Tang ("Tang") and Huaidan Chen, majority owners of Jag Pacific, Ltd., participated in the decision to contribute.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

APIC is a privately held California corporation owned by Jag Pacific, Ltd., a foreign corporation.¹ APIC describes itself as a "diversified international investment holding company with businesses throughout the US and China."² Tang and Huaidan Chen are Chinese nationals who own a majority interest in Jag Pacific, Ltd.³ According to APIC's website, Tang is the Chairman/President of APIC's corporate board, and Huaidan Chen is a board member.⁴ Wilson

¹ Response of APIC, Wilson Chen, Huaidan Chen, and Gordon Tang ("APIC Resp.") at 2 (Sept. 1, 2016).

² See <http://www.apicincus.com/>.

³ APIC Resp. at 2.

⁴ See <http://www.apicincus.com/>.

1 Chen, a United States citizen, is the Executive Director of APIC and also sits on its board.⁵

2 According to APIC, Wilson Chen oversees APIC's United States operations.⁶

3 Right to Rise USA is an independent expenditure-only committee that supported Jeb
4 Bush's 2016 presidential campaign.⁷

5 The Complaint's allegation stems from two contributions that APIC made to Right to
6 Rise USA: \$1,000,000 on March 26, 2015, and \$300,000 on June 29, 2015.⁸ The Complaint
7 cites to an article from the online publication *The Intercept*, quoting statements made by Wilson
8 Chen and Tang regarding the contributions.⁹ The relevant portion of that article states:

9 According to Chen, 'I proposed to make a donation to the
10 Republican Party and then let the board of directors approve it
11 before sending the donation.' APIC's board includes Chen himself
12 and Neil Bush, both U.S. citizens, but also Chinese citizens Tang
13 and Huaidan Chen. For Tang's part, when asked why APIC made
14 the donation to Right to Rise USA, he responded: 'Wilson said to
15 donate, so I did, I don't really mind.'¹⁰

16 APIC, Tang, Huaidan Chen, and Wilson Chen (collectively "APIC Respondents")
17 provided a joint response to the Complaint. The joint response includes an affidavit from
18 Jennifer Zhang ("Zhang"), APIC's chief financial officer, which attests that "Wilson Chen was
19 the sole decision-maker with respect to these political contributions."¹¹ The APIC Respondents

⁵ APIC Resp. at 2. According to the Complaint, the board also includes Neil Bush, a United States citizen, and Jinshan Mao, the board's Vice President, whose nationality is not stated in the record. Compl. at 4.

⁶ APIC Resp. at 2.

⁷ See <https://www.facebook.com/RighttoRiseUSA/>.

⁸ Compl. at 4, see also Right to Rise USA 2015 Amended Mid-Year Report at 837, 1,400 (May 20, 2016). Right to Rise USA refunded \$152,230 to APIC on May 2, 2016. See Right to Rise USA 2016 June Monthly Report at 682 (June 20, 2016).

⁹ See Compl. at 4-5 quoting Schwarz, Jon and Fang, Lee, *The Citizens United Playbook: How a Top GOP Lawyer Guided a Chinese-Owned Company into U.S. Presidential Politics*, THE INTERCEPT (Aug. 3, 2016), available at <https://theintercept.com/2016/08/03/gop-lawyer-chinese-owned-company-us-presidential-politics/>.

¹⁰ *Id.*

¹¹ APIC Resp., Zhang Aff. ¶ 6.

1 also dispute *The Intercept* article's translation of Tang's quoted statement, asserting that Tang
2 actually said "Wilson said to donate, so it was done."¹² According to the APIC Respondents,
3 Tang was made aware of APIC's contributions to Right to Rise USA only after the contributions
4 were made.¹³ The APIC Respondents further assert that the funds used to contribute to Right to
5 Rise USA came from a specific ledger account that was maintained within APIC's operating
6 account; this ledger account was assertedly established for the purpose of making political
7 contributions and funded by U.S. revenue.¹⁴ The joint response states that the ledger account
8 was funded, at least in part, by APIC's January 30, 2015, sale of the KOIN Tower in Portland,
9 Oregon, and that this sale generated a net profit of more than \$11 million, a portion of which was
10 directed to the ledger account.¹⁵

11 B. Legal Analysis

12 The Act and Commission regulations prohibit a foreign national from making a
13 contribution, directly or indirectly, in connection with a federal, state, or local election.¹⁶ A
14 "foreign national" is an individual who is not a citizen of the United States or a national of the
15 United States and who is not lawfully admitted for permanent residence.¹⁷ The Commission's
16 regulations provide that a "foreign national shall not direct, dictate, control, or directly or
17 indirectly participate in the decision-making process of any . . . corporation . . . with regard to . . .

¹² *Id.* at 5.

¹³ *Id.*

¹⁴ *Id.* at 4.

¹⁵ *Id.*

¹⁶ 52 U.S.C. § 30121(a)(1)(A), (B); 11 C.F.R. § 110.20(b), (c).

¹⁷ 52 U.S.C. § 30121(b)(2). The term "foreign national" also includes "a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country." 52 U.S.C. § 30121(b)(1); 22 U.S.C. § 611(b).

1 election-related activities.”¹⁸ This prohibition includes “decisions concerning the making of
2 contributions, donations, expenditures, or disbursements.”¹⁹ It is also unlawful for a person to
3 provide substantial assistance “in the solicitation, making, acceptance, or receipt” of an unlawful
4 foreign contribution.²⁰ The Act further prohibits persons from soliciting, accepting, or receiving
5 a contribution or donation from a foreign national.²¹

6 Generally, a domestic subsidiary or affiliate of a foreign national corporation is permitted
7 to make contributions (when corporate contributions are otherwise permitted) if the funds are
8 generated solely by their domestic operations²² *and* if no foreign nationals are involved in the
9 decision to make the contribution.²³ In Advisory Opinion 2000-17, the Commission allowed the
10 domestic subsidiary of a foreign company to form a “special committee” with the authority to
11 establish and administer a separate segregated fund because that committee was comprised only
12 of U.S. citizens or permanent resident aliens residing in the United States.²⁴ Where decision-
13 making authority is vested with U.S. citizens or permanent resident aliens, foreign national

¹⁸ 11 C.F.R. § 110.20(i).

¹⁹ *Id.*

²⁰ 11 C.F.R. § 110.20(h).

²¹ 52 U.S.C. § 30121(a)(2). The Commission’s regulations employ a “knowingly” standard here. 11 C.F.R. § 110.20(g). A person knowingly accepts a prohibited foreign national contribution or donation if that person has actual knowledge that funds originated from a foreign national, is aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the funds originated from a foreign national, or is aware of facts that would lead a reasonable person to inquire whether the funds originated from a foreign national but failed to conduct a reasonable inquiry. 11 C.F.R. § 110.20(a)(4).

²² See Advisory Op. 1992-16 (Nansay); Advisory Op. 1989-20 (Kuilima).

²³ See 11 C.F.R. § 110.20(i); *see, e.g.*, MUR 6093 (Transurban Grp.), F&LA at 3-4. The Commission has specifically determined that “no director or officer of the company or its parent who is a foreign national may participate in any way in the decision-making process with regard to making . . . proposed contributions.” Advisory Op. 1989-20 at 2; *see, e.g.*, MUR 6093, F&LA at 4 (the Act was violated where foreign company’s board of directors directly participated in determining whether to continue the political contributions policy of its U.S. subsidiaries); MUR 6184, F&LA at 6-7 (Skyway Concession Company, LLC) (the Act was violated where a foreign national CEO participated in the subsidiary’s election-related activities by vetting the campaign solicitations forwarded to him by the company’s relations consultant or deciding which nonfederal committees would receive contributions from the company).

²⁴ Advisory Op. 2000-17 at 2-6 (Extendicare Health Services, Inc.).

1 corporate board members must not determine who will exercise decision-making authority.²⁵

2 This ensures the exclusion of foreign nationals from direct or indirect participation in the
3 decision-making process related to election-related activities.²⁶

4 In this matter, the Respondents assert that the contributions to Right to Rise were funded
5 solely by APIC's domestic operations. They submitted an affidavit from CFO Zhang stating that
6 the subject funds were generated in the United States.²⁷ Zhang specifically avers that APIC
7 maintains a separate ledger account for APIC's political contributions, which is funded entirely
8 from U.S.-derived resources, and that the aforementioned KOIN Tower sale helped to fund that
9 account.²⁸ No information in the record contradicts these assertions.

10 The available information shows, however, that foreign nationals may have been
11 involved in making the contributions to Right to Rise because the APIC board of directors,
12 which included foreign national directors, apparently approved Wilson Chen's proposal to
13 contribute. Wilson Chen reportedly acknowledged to *The Intercept* that "I proposed to make a
14 donation to the Republican Party and then let the board of directors approve it before sending the
15 donation."²⁹ The APIC Respondents do not deny the accuracy of this quote and they do not deny
16 that the board may have approved the payment. The joint response, in fact, makes little mention
17 of the board at all and provides no explanation of its role in the governance of the company or in
18 making contributions. The APIC Respondents explain that Wilson Chen was the "sole decision-
19 maker with respect to these political contributions" and assert that he functioned as a "special

²⁵ See Advisory Op. 2000-17; Advisory Op. 1990-8 (CIT Group Holdings, Inc.); MUR 3460 (Sports Shinko Co., Ltd.), F&LA at 11.

²⁶ See MUR 3460, F&LA at 11.

²⁷ APIC Resp., Zhang Aff. ¶ 3.

²⁸ *Id.* at 4; Zhang Aff. ¶¶ 3-5.

²⁹ *Supra* note 9.

1 committee' with sole decision-making authority over all political contributions."³⁰ But this
2 explanation does not exclude the possibility that in his role as decision-maker he nevertheless
3 sought board approval for the payment. The joint response also denies that foreign national
4 board member Tang was involved in the contribution, but it makes no similar denial with respect
5 to the other known foreign national director, Huaidan Chen. When considered in its totality,
6 therefore, the joint response does not overcome the allegation of board involvement in the
7 making of the payment.

8 Under these circumstances, including the lack of a clear disavowal of Wilson Chen's
9 quoted statement that APIC's board — which includes foreign nationals — participated in the
10 decision-making by approving APIC's \$1.3 million in contributions, there is reason to believe
11 that APIC, Wilson Chen, Huaidan Chen, and Gordon Tang violated the Act's foreign national
12 contribution ban.

13 Therefore, the Commission finds reason to believe that APIC violated 52 U.S.C.
14 § 30121(a)(1)(A) by making a foreign contribution, that Gordon Tang and Huaidan Chen
15 violated 52 U.S.C. § 30121(a)(1)(A) by participating in decisions involving election-related
16 activities, and that Wilson Chen violated 52 U.S.C. § 30121(a)(1)(A) by knowingly providing
17 substantial assistance to a foreign national for the purpose of making a prohibited contribution.

³⁰ APIC Resp. at 5, Zhang Aff. ¶ 6. Wilson Chen did not personally attest to his decision-making authority — the sworn declaration that Wilson Chen was the sole decision-maker comes from APIC's CFO and not from Wilson Chen himself. Further, even if Wilson Chen was vested with decision-making authority for the Right to Rise contributions, or for contributions generally, the available information indicates that Tang may have played a role in vesting him with that authority. See Advisory Op. 1990-8; Advisory Op. 2000-17 at 5-6; MUR 3460, F&LA at 11 (explaining that foreign national corporate board members must abstain from voting on matters concerning an SSF, "including the selection of individuals to operate the SSF and to exercise decision making authority regarding contributions and expenditures."). While the response is silent on who may have vested Wilson Chen with the asserted authority, or how, the response establishes that Tang did have a role in setting general parameters for Wilson Chen to follow. In particular, the response asserts that Tang provided Wilson Chen with a "general directive" that "all political contributions must be legal and within the financial ability of the company, so as not to impact company operations." APIC Resp. at 4.